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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 IN RE: HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION

Case No. 5:11-cv-2509-LHK

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17 THIS DOCUMENT RELATES TO:  
18 ALL ACTIONS  
19  
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**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION TO UNSEAL ALL  
PAPERS ASSOCIATED WITH  
PLAINTIFFS' MOTION TO COMPEL**

1     **I.     INTRODUCTION**

2             On March 27, 2014, the Court ordered Plaintiffs to file “a 5-Page, Under Seal Motion to  
3     Compel” by April 9, 2014. Case Management Order (“Order”) (Dkt. 768). Apart from noting  
4     that they “disagree[d]” with the Court’s decision, Plaintiffs lodged no formal objection to the  
5     Order and filed their motion to compel under seal, “to comply with the Court’s March 27, 2014  
6     Case Management Order.” Pls.’ Admin. Mot. to Seal Mot. to Compel. at 2 (Dkt. 789). Now,  
7     nearly six months later—and citing no intervening case law or change in factual circumstances—  
8     Plaintiffs ask the Court to revisit its Order, and allow them to move to unseal “all papers filed in  
9     connection with” their motion to compel. Mot. to Unseal at 1 (Dkt. 991). This motion is  
10    untimely and improper, and the Court should deny it for two reasons.

11            **First**, Plaintiffs’ motion is nothing more than a tardy motion for reconsideration, disguised  
12    as an administrative motion. Because Plaintiffs have satisfied none of the requirements for  
13    reconsideration, the motion should be denied.

14            **Second**, in addition to the procedural defects in Plaintiffs’ motion, their request should be  
15    denied on the merits because the Court got it right the first time. The documents at issue are  
16    properly maintained under seal, and Plaintiffs have provided no new arguments or information  
17    requiring their unsealing.

18     **II.    ARGUMENT**

19            **A.     Plaintiffs’ tardy and unsupported request for reconsideration violates Civil**  
20            **Local Rule 7-9.**

21            Civil Local Rule 7-9(a) provides that, prior to final judgment, “any party may make a  
22    motion before a Judge requesting that the Judge grant the party leave to file a motion for  
23    reconsideration of any interlocutory order on any ground set forth in Civil L.R. 7-9 (b). No party  
24    may notice a motion for reconsideration without first obtaining leave of Court to file the motion.”  
25    Here, Plaintiffs challenge the wisdom of the Court’s prior Order while making no attempt to  
26    satisfy the requirements of Local Rule 7-9.

27            Plaintiffs concede that the Court issued a valid and enforceable order requiring them to  
28    file their motion to compel under seal. The Court considered the question during a Case

1 Management Conference (“CMC”) on March 27, 2014, with counsel for all parties present.  
2 When Defendants expressly requested that the relevant papers be filed under seal, the Court  
3 unambiguously replied, “Yes, that’s fine.” CMC Hr’g Tr. at 30:7-9. That decision was  
4 subsequently memorialized in the Court’s March 27, 2014 Case Management Order (directing  
5 Plaintiffs to file a “5-Page, *Under Seal* Motion to Compel” and Defendants a “5-Page *Under Seal*  
6 *Opposition*”) (emphasis added). Plaintiffs made no objection at the hearing and filed their motion  
7 under seal, citing the Court’s Order. (Dkt. 789). Nearly six months later, Plaintiffs now ask the  
8 Court to “revisit its Order” regarding sealing. Mot. to Unseal at 1.

9 Accordingly, if Plaintiffs want the Court to reconsider its prior Order, they must comply  
10 with Civil Local Rule 7-9. **First**, they must seek leave to file the motion. Civ. L.R. 7-9(a). They  
11 have neither requested nor received such leave. **Second**, Plaintiffs must “specifically show  
12 reasonable diligence in bringing the motion.” Civ. L.R. 7-9(b). Plaintiffs cannot satisfy this  
13 burden. They effectively consented to sealing by standing silent at the CMC when the sealing  
14 request was made and granted and failing to ask the Court to reconsider when they filed their  
15 motion to compel. Since that time, Plaintiffs have allowed six months to elapse without  
16 contesting the Order. In fact, Plaintiffs failed to mention this new request in the recently filed  
17 CMC Statement. (Dkt. 981). **Third**, Plaintiffs have satisfied none of the factors set forth in Local  
18 Rule 7-9(b). They have failed to show (1) that “a material difference in fact or law exists” from  
19 what the Court considered in March, (2) that “new material facts or a change of law” have  
20 emerged since March, or (3) that the Court displayed a “manifest failure” to consider relevant  
21 facts or legal arguments. Civ. L.R. 7-9(b).

22 Plaintiffs’ failure to satisfy Rule 7-9 dooms their instant motion.<sup>1</sup> Plaintiffs may *now* have  
23 a different view of the Court’s Order, but, as one court put it when denying a motion to reconsider

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24 <sup>1</sup> Even if the Court were to construe Plaintiffs’ motion as a proper administrative motion, the  
25 request must still be denied for failure to comply with Local Rule 7-11. That rule requires the  
26 party seeking administrative relief to submit either a stipulation from opposing counsel or a  
27 declaration explaining why such a stipulation could not be obtained. Civ. L.R. 7-11(a). Plaintiffs  
28 made no effort to obtain a stipulation from Defendants, and submitted no declaration explaining  
that failure. Ironically, Plaintiffs’ disregard for the local rule did not stop them from chastising  
Defendants for neglecting to file a declaration supporting sealing the documents at issue—even  
though the Court had already issued an Order granting that very request. Mot. to Unseal at 1.

1 a prior sealing decision, “[m]ere disagreement with a previous order is an insufficient basis for  
2 reconsideration.” *Wells Fargo Bank v. The Magellan Ship Owners Ass’n*, No. CV-09-587-PHX-  
3 MHM, 2010 WL 376916, at \*1 (D. Ariz. Jan. 25, 2010). Because Plaintiffs have failed—both  
4 substantively and procedurally—to offer any reason for the Court to undo its Order, their ill-  
5 disguised motion for reconsideration should be denied.

6 **B. The documents at issue are properly maintained under seal.**

7 Notwithstanding these procedural deficiencies, Plaintiffs’ motion to unseal should be  
8 denied because the Court got it right the first time, in its March 27, 2014 Order. Plaintiffs’  
9 motion to compel and related documents are sealable for the reasons referenced during the March  
10 27 CMC and set forth in Defendants’ Joint Administrative Motion to Strike the Confidential  
11 Settlement Communication Disclosed in the Joint Case Management Statement or, in the  
12 Alternative, File Under Seal and accompanying Declaration of Justina K. Sessions. (Dkt. 738,  
13 738-1 (explaining that public disclosure would prejudice Defendants by revealing confidential  
14 information that was disclosed to Plaintiffs only in the course of confidential settlement  
15 discussions and mediation)).

16 Plaintiffs now suggest that the Court “agreed to permit the briefing to be filed under seal  
17 in the first instance,” but perhaps required some further showing by Defendants. Mot. to Unseal  
18 at 1-2. Not so. At the CMC, the Court left open the possibility of reviewing the document at  
19 issue *in camera*, after all of the briefing was in. But there was no suggestion—none  
20 whatsoever—that the papers associated with Plaintiffs’ motion to compel would be made public  
21 at any time. Such suggestion runs directly contrary to the strong federal policy to keep settlement  
22 communications confidential. Furthermore, Plaintiffs’ suggestion that Defendants were required  
23 to submit additional declarations or arguments in support of sealing is belied by the local rules  
24 and the record in this case. Local Rule 79-5(b) allows documents to be filed under seal “pursuant  
25 to a court order that authorizes the sealing of the particular document.”<sup>2</sup> The Court’s Case

26 <sup>2</sup> See also Civ. L.R. 79-5(d)(1)(A) (procedures for filing additional declarations “apply to  
27 requests to seal in which the *sole* basis for sealing is that the document(s) at issue were previously  
28 designated as confidential...” and not where the documents are filed pursuant to an existing court  
order) (emphasis added).

1 Management Order is just such an order. In addition, when Plaintiffs filed their initial motion to  
2 compel under seal, they cited the very Order they now claim is deficient. Plaintiffs have pointed  
3 to no new facts or material changes in the law that render the Court's initial decision erroneous.  
4 The Court should therefore decline Plaintiffs' invitation to "to rethink what it has already thought  
5 through." *Wells Fargo*, 2012 WL 376916, at \*1.

6 **III. CONCLUSION**

7 Plaintiffs' motion to unseal is both procedurally faulty and substantively meritless. The  
8 Court should deny it.

9  
10 Respectfully submitted,

11 Dated: September 23, 2014

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12 **CONCURRENCE**

13 I, Robert A. Van Nest, am the ECF user whose ID and password are being used to file this  
14 DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO UNSEAL ALL PAPERS  
15 ASSOCIATED WITH PLAINTIFFS' MOTION TO COMPEL. In compliance with Civil Local  
16 Rule 5-1(i)(3), I hereby attest that Lee H. Rubin, Michael F. Tubach, David C. Kiernan, and  
17 Gregory P. Stone have concurred in this filing.  
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